

**HIGHLIGHTS****EPA Considers Replacing All Lead Water Pipes as Part of Rule Revisions**

EPA wants the lead out. All of it. Replacing lead service lines in their entirety is among the regulatory options the EPA is mulling over as part of its upcoming revisions to the lead and copper rule. A white paper says lead service line replacement is among the options for addressing drinking water contaminated with lead leaching from old pipes and plumbing fixtures. **A-5**

**Environmental Crime Prosecutions at Lowest Level in Two Decades**

Criminal prosecutions based on EPA investigations are down by half compared to five years ago and at the lowest level in two decades, according to Justice Department data. The latest available data show 81 federal environmental crime prosecutions so far in 2016, or 88 for the year if the same pace continued through year end. **A-7**

**Leader of House Science Committee Sees Conspiracy in Glyphosate Delays**

The Republican leader of the House Science Committee blames a conspiracy of environmental activists and EPA staffers for delays in the agency's risk review of glyphosate, the active chemical in Monsanto's Roundup weed killer product line and the world's most widely used pesticide. **A-3**

**Witnesses Freeze Up as Justice Department Seeks Violation Prosecutions**

One year into the Justice Department's push to prosecute employees criminally for environmental and safety violations, workers grow leery about sharing information with investigators, a panel of industry attorneys say. The new fear is that any comments could later be used to prosecute those who made them, years after the fact. **A-6**

**Recovery Plan Is Imminent for Two Pacific Northwest Fish Populations**

The long-running tensions over hydroelectric dams and fish in the Columbia River and Snake River basins are ratcheted up again when the National Marine Fisheries Service releases its proposed recovery plan for two regional populations of the fish. Operations of eight large federal hydroelectric dams on the two rivers are managed in ways that maximizes salmon and steelhead species health, a strategy that can at times conflict with optimal electric power production. **A-4**

**Anadarko Forges New Deal on Use of City's Wastewater in Fracking**

Anadarko Petroleum Corp. renegotiates the final annual payment it owes the city of Aurora, Colo., as part of a five-year, \$9.5-million contract allowing it to use the city's "used" water to frack oil and natural gas wells. Anadarko faces tepid revenues due to low energy commodity prices, so it reached an agreement with Aurora Water, the city's supplier of water, sewer and stormwater services, to spread payments for the \$2,025,915 it owes throughout 2016, 2017 and 2018. **A-8**

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**PODCAST:** The new overhaul of the federal toxic chemicals law might be the most significant environmental legislation passed in a generation, but what will it mean for you and me? For the latest episode of our podcast, Parts Per Billion, we speak with an environmental attorney and a consumer products industry leader to hear their interpretations about how this law will affect the marketplace and what to look out for in the near—and very distant—future. Listen to the podcast at: <http://www.soundcloud.com/partsperbillion/tsca> **A-12**

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**CLIMATE CHANGE:** Exxon Mobil Corp. suffers its second setback in three days in a New York court as a judge rejects its claim that audit documents sought in a climate change fraud probe were protected by a so-called accountant-client privilege. **A-9**

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### **GOP Senator: Courts, Not Congress, Must Repair Regulatory State**

Legislation to slow or stop the perceived onslaught of regulation from “unaccountable” federal agencies over the past eight years consistently fails, but one Republican senator thinks he knows a better solution. “Obviously the courts have to be the one to do it,” Sen. James Lankford (R-Okla.) told Bloomberg BNA. “Now we could do it legislatively, but you tell me which president is willing to sign a [bill] that takes power away from the executive branch.” **B-1**

### **Federal Appeals Court Gives U.S. More Time to Defend Clean Water Rule**

A federal appeals court gives the EPA and the U.S. Army Corps of Engineers nearly an extra month to file their defense of the Clean Water Rule. The U.S. Court of Appeals for the Sixth Circuit gives the government a new deadline of Jan. 18, 2017, to file its response in defense of the rule; the deadline was Dec. 23. **A-1**

### **Power, Landfill Companies Face New Coal Ash Regulations in Georgia**

Georgia Power’s handling of coal ash faces another layer of oversight after state regulators passes rules to supplement federal coal-ash regulations, but environmental advocates say the state didn’t go far enough. The electric utility—a subsidiary of Atlanta-based Southern Co.—is subject to state permitting requirements for its coal-ash pits and faces corrective action orders from the Georgia Environmental Protection Division if problems arise. **A-2**

### **EPA Opens Enforcement Inquiry Into Misuse of Herbicides with Dicamba**

A flurry of complaints of crop damage from misuse of herbicides containing Dicamba leads the EPA to open a criminal investigation in a four-county area of southeastern Missouri. Around 41,000 acres of soybeans and other crops were damaged by Dicamba, a herbicide used to control broadleaf weeds and woody plants, which is highly volatile and prone to spread beyond the intended field through drift and vapor volatility. **A-10**

### **EPA Plans New Use Rules for Three Chemicals After Industry Objections**

The EPA will propose new use rules for one carbon nanotube and two diisocyanates next week after a trade association and law firm objected to the agency previously having issued the rules as direct final regulations. Interested parties have until Nov. 28 to file comments on the proposed rules. The agency already allows all three chemicals to enter commerce. **A-2**

### **Study Calls for More Water to Be Released Along the U.S.-Mexico Border**

A pilot program to release 340 billion gallons of water along the U.S.-Mexico border brings vegetation and bird life to normally parched areas of the Colorado River Delta, and the plan should continue as the countries negotiate renewal of a bilateral agreement, the International Boundary and Water Commission reports. In the past decade, Mexico and the U.S. have made an effort to address the degraded environment along the border near Yuma, Ariz., caused by 70 years of reclamation projects along the Colorado River that reduced its delta by 90 percent. **A-7**

### **Next U.S. Offshore Wind Farm Set for Lake Erie, Deal by Year-End**

The next U.S. offshore wind farm might be almost 500 miles (800 kilometers) from the nearest ocean. The Lake Erie Energy Development Corp. expects to finalize a deal by year-end with Fred. Olsen Renewables AS to build a 20.7 megawatt wind project in Lake Erie, off the Ohio coast, says the president of the Cleveland-based non-profit group. **A-3**

## **Daily Environment Report**

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## Documents Available

Copies of documents referenced in this issue are available for a fee (\$27 for up to 200 pages) from Research & Custom Solutions. To order, call 800 372-1033; fax 703 341-1643; or e-mail [research@bna.com](mailto:research@bna.com).

# News

## Renewable Energy

### Space Technology to Help Lockheed Into New Energy Frontier

**L**ockheed Martin Corp. says engineering tidal turbines to withstand the relentless pounding of the Earth's oceans isn't much different than the machines it makes to survive the extreme conditions of outer space.

The world's largest defense contractor is trying to re-direct more of its high-tech military knowledge to civilian markets. Lockheed Martin's new mission: apply more than a century of know-how to renewable-energy technologies that may mitigate the international security challenges of climate change.

"Tidal has a need for advanced manufacturing, engineering and systems integration," Lockheed Martin Energy Vice President Frank Armijo said in an interview at a Bloomberg New Energy Finance conference in London. "We use some of the same technology that we use for our space programs to help protect the systems within the turbine."

Lockheed Martin's pivot toward international renewable energy markets reflects broader trends in the military. After Google, the U.S. Department of Defense has become the country's second-largest buyer of emissions-free electricity, in a bid to boost energy security. At the same time, warnings by military leaders have grown louder over the potential conflicts that will be ignited by runaway global warming.

**Unique Technologies.** "Lockheed Martin has been involved in energy technologies for decades, meeting the needs of a lot of our federal and defense customers," Armijo said. "Out of that, we have some unique technologies that we think can be offered across the energy marketplace."

Lockheed Martin Energy, a unit of Lockheed's missile and fire-control business based in Prairie, Texas, is currently working on a tidal farm in Scotland with Atlantis Resources Ltd.

The AR1500 tidal turbine they'll install uses materials and manufacturing processes Lockheed Martin developed to help U.S. space shuttles survive the harsh conditions of outer space. The next phase of the project will be installed in the second half of November with completion forecast early next decade.

Adding urgency to Lockheed's International diversification and focus on renewables are recent cuts to the U.S. defense budget.

Lockheed told investors in its 2015 annual report it was "seeking to lessen our dependence on contracts with the U.S. government" because the federal government's "significant fiscal and economic challenges" posed risks to its business.

**International Growth.** "We see 50 percent of our growth coming internationally," said Armijo. "Historically, we haven't been focused on that, we've had enough business and growth going on in the U.S. that in essence that's where our priority and our growth has been but now that we've consolidated our entire energy portfolio, we think that the opportunity to go international is there."

Lockheed Martin's adjusted net income rose 1.6 percent last year to \$3.7 billion last year. Even as overall revenue climbed 6.2 percent to \$46.1 billion, sales fell in three of its five business divisions.

Lockheed's move into green energy "is a smart play," according to Bloomberg New Energy Finance analyst Logan Goldie-Scot.

In addition to making turbines, Lockheed has developed waste-to-energy technology that converts garbage and wood chips to synthetic natural gas. They also make compact lithium-ion batteries, smart grids and miniature power systems that operate with renewables. In the second half of next year, the company wants to begin selling flow batteries for projects at least a megawatt in size.

"By focusing on lithium-ion in the near term while continuing to develop its flow battery technology, they can gain experience that could be used to enhance this product in the run up to its commercial release," Goldie-Scot said. "Flow batteries are really innovative but it's too soon to say if they work or not."

Lockheed's decision to go global is already yielding some returns. It announced its first U.K. power project on Oct. 11, a \$135-million waste-to-energy plant in Wales being built with CoGen Ltd. that will generate 15 megawatts. It has plans to install more across the country.

By Anna Hirtenstein

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## Water Pollution

### U.S. Given More Time to Defend Water Rule in Appeals Court

**A** federal appeals court gave the Environmental Protection Agency and the U.S. Army Corps of Engineers nearly an extra month to file their defense of the Clean Water Rule.

The U.S. Court of Appeals for the Sixth Circuit Oct. 25 gave the government a new deadline of Jan. 18, 2017, to file its response in defense of the rule; the deadline had been Dec. 23.

The Justice Department, which will file a consolidated brief on behalf of EPA and the corps, sought the extra time after states, business and municipal groups challenging the rule got extra time, until Nov. 1, to file their briefs.

The appeals court is considering nearly two dozen challenges mounted against the Clean Water Rule (RIN:2040-AF30), which would clarify which waters and wetlands fall under the jurisdiction of the Clean Water Act.

The rule, which the Obama administration published in June 2015, is being contested by 32 states and dozens of business, industrial and commercial groups.

The Sixth Circuit stayed the rule a year ago pending its decision on its constitutionality.

The court Oct. 25 set a Feb. 19, 2017, deadline for intervenors to file their briefs either in support or in opposition to the rule.

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## Energy

### Power, Landfill Companies Face New Coal Ash Rules in Georgia

**G**eorgia Power's handling of coal ash will face another layer of oversight after state regulators passed rules to supplement federal coal-ash regulations, but environmental advocates say the state didn't go far enough.

The electric utility—a subsidiary of Atlanta-based Southern Co.—is subject to state permitting requirements for its coal-ash pits and could face corrective action orders from the Georgia Environmental Protection Division if problems arise. The Environmental Protection Division's parent agency, the Georgia Department of Natural Resources, gave final approval to the state's new coal combustion residual rules on Oct. 26.

The state rules largely implement federal coal ash rules that the U.S. Environmental Protection Agency made final in December 2014, while also requiring state permits for coal ash storage at power plant sites as well as municipal and commercial landfills. The Georgia rules also require site operators to notify the Environmental Protection Division and the public if coal ash chemicals leak into nearby streams or groundwater.

**Ash Removal Not Required.** The final Georgia rules didn't require full excavation of coal-ash ponds and removing the ash to dry, lined landfills at a safe distance from lakes and rivers, as environmental groups such as the Southern Alliance for Clean Energy had urged.

"We would argue there's no need to wait and see how big a problem each pond is," Amelia Shenstone, a campaign director with the Southern Alliance for Clean Energy, told Bloomberg BNA on Oct. 25. "We already know unlined ash ponds lead to groundwater contamination."

The Southern Alliance for Clean Energy helped submit a comment letter to the Environmental Protection Division in August on behalf of the Georgia Water Co-

alition, which also called for more frequent groundwater monitoring than the semi-annual sampling required in the rules. The group also urged the Environmental Protection Division to require testing of private drinking water wells near coal-ash sites.

The Environmental Protection Division said in a summary of its responses that its extensive research shows semi-annual sampling is appropriate and that the agency lacks authority to require testing of private wells.

**Georgia Power to Close Ash Ponds.** Georgia Power plans to stop operating all 29 of its coal-ash ponds within three years, the company announced earlier this year. It plans to remove the ash from 17 ponds that are adjacent to lakes and rivers while closing the other 12 ponds in place.

Shenstone said the company hasn't provided enough detail on how it will close the 12 ponds to convince her that the plans are sound.

"I'm still not confident that Georgia Power's ash pond closure plan adequately protects the public," she said.

The company has begun publishing water monitoring data as required by the federal coal-ash regulations, and Shenstone noted the data show elevated levels of hazardous chemicals—such as an arsenic level near the company's Plant Hammond that is 30 times the state's hazardous groundwater standard.

The company's plans show it will remove ash from three ponds at Plant Hammond and close a fourth pond in place there.

Georgia Power spokesman Jacob Hawkins told Bloomberg BNA the company is "going above and beyond what's required by the federal CCR rule in our closure plans and we are now turning our attention to complying with Georgia EPD's new, more stringent state rule." The company had raised concerns in an August comment letter about compliance deadlines and technical requirements for closure and post-closure care of coal ash sites.

By CHRIS MARR

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The new Georgia coal ash rules are at <http://src.bna.com/jEq>.

The Georgia Water Coalition's comment letter is at <http://src.bna.com/jEr>.

The Georgia EPD's responses to comments are at <http://src.bna.com/jEu>.

The Georgia Power comment letter is available at <http://src.bna.com/jFE>.

## Chemicals

### EPA Proposes Three New Use Rules For Chemicals After Industry Objects

**T**he Environmental Protection Agency will propose new use rules for one carbon nanotube and two diisocyanates Oct. 27 after a trade association and law firm objected to the agency previously having issued the rules as direct final regulations.

Interested parties have until Nov. 28 to file comments on the proposed rules (RIN:2070-AB27).

The agency already has allowed all three chemicals to enter commerce. The original manufacturers, each of whom claimed its identity to be confidential business information, planned to make and use the chemicals in ways the agency concluded would not pose unreasonable health or environmental risks, the agency concluded after reviewing premanufacturing notices and possibly other information the companies submitted.

The proposed new use rules would give the agency 90 days to look at other manufacturing or uses of the chemicals so it could determine whether those would pose unreasonable risks.

The premanufacture notice, or PMN, numbers, generic identities and general purpose of the three chemicals are:

- P-15-0276, functionalized carbon nanotubes, which will be used as a thin film for electronic applications;

- P-15-0378, diisocyanato hexane, homopolymer, alkanolic acid-polyalkylene glycol ether with substituted alkane (3:1) reaction products-blocked, which will be used to help adhesives set and provide a coating for layers of wood; and

- P-15-0559, modified diphenylmethane diisocyanate prepolymer with polyol, which will be used to make flexible foam.

On May 16, the EPA issued direct final rules for all three chemicals, but it withdrew those rules July 14 after the American Chemistry Council and its Diisocyanates Panel and Aliphatic Diisocyanates Panel submitted separate notices to the EPA saying they planned to object to the diisocyanates rules. Under the EPA's direct final rules process, the trade association was not required to state its objections, and it did not.

James Votaw, partner at Manatt, Phelps & Phillips LLP in Washington, D.C., objected to the EPA's description of what would constitute a new use of the carbon nanotubes and the rule's disposal requirements for this particular type of nanotube.

BY PAT RIZZUTO

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*An advance copy of the EPA's proposed rules is available at <http://src.bna.com/jEt>. Comments, marked Docket ID No. EPA-HQ-OPPT-2015-0810, should be submitted by Nov. 28 at <http://www.regulations.gov>.*

## Renewable Energy

### Next U.S. Offshore Wind Farm Set To Emerge from Lake Erie

**T**he next U.S. offshore wind farm in the U.S. will probably be almost 500 miles (800 kilometers) from the nearest ocean.

The Lake Erie Energy Development Corp. expects to finalize a deal by year-end with Fred. Olsen Renewables AS to build a 20.7 megawatt wind project in Lake Erie, off the Ohio coast, the president of the Cleveland-based non-profit group said in an interview.

LeedCo is developing the \$127 million Icebreaker project to demonstrate that offshore turbines are viable in the Great Lakes, a region with the potential to generate 1,000 megawatts of wind energy by 2020. Construction may start in early 2018. The only U.S. offshore wind farm was completed this year near Block Island, R.I., by Deepwater Wind LLC.

"Building offshore wind on the Great Lakes is our best opportunity to generate clean energy locally," LeedCo President Lorry Wagner said in an Oct. 26 interview at the American Wind Energy Association Offshore Windpower conference in Warwick, R.I.

The project received a \$40 million grant in May from the U.S. Energy Department. Norway-based Fred. Olsen will build, maintain and eventually own the project. Cleveland Public Power has agreed to buy two-thirds of the electricity, and LeedCo is negotiating to sell the remainder to other companies.

BY JOE RYAN

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## Pesticides

### GOP Science Committee Chair Sees EPA Glyphosate Conspiracy

**T**he Republican leader of the House Science Committee is blaming a conspiracy of environmental activists and EPA staffers for delays in the agency's risk review of glyphosate, the active chemical in Monsanto's Roundup weed killer product line and the world's most widely used pesticide.

"There are activists working both inside and outside the agency to derail this process," Rep. Lamar Smith (R-Texas), the committee's chairman, wrote in an Oct. 25 letter to the Environmental Protection Agency. Smith is concerned that EPA will determine that glyphosate is unsafe despite evidence to the contrary.

Smith also asked EPA administrator Gina McCarthy for more information on her agency's involvement in a disputed 2015 report of glyphosate by the cancer research arm of the World Health Organization. Smith's committee has been investigating the EPA's glyphosate review since the spring, when the agency rescinded a report it had inadvertently posted online that found glyphosate likely does not cause cancer, contradicting the WHO's earlier findings.

EPA spokesman Nick Conger told Bloomberg BNA in an e-mail the agency "will review and respond to Chairman's Smith's letter."

**Unreasonable Delay?** Smith and other lawmakers have criticized the EPA for delays in making a final determination on the safety of glyphosate. Because the weed killer is often used in tandem with widely planted biotech crops, any restrictions the EPA places on its use could have seismic economic impacts on the agriculture industry.

The latest delay came earlier this month when the EPA postponed a meeting of independent scientists it



was assembling to review all of the agency's work on glyphosate, including the EPA's Cancer Assessment Review Committee report that it inadvertently posted online. Conger said one of the scientists had to back out and that the agency did not have enough time to find a replacement with similar expertise, but declined to name the scientist, citing privacy reasons.

The delay, in effect, all but guarantees that a decision on glyphosate will not be made before the end of President Barack Obama's term. The scientific meeting had been scheduled to take place last week but, thus far, the agency has not rescheduled it.

When the EPA began its safety review of glyphosate in 2009, it set a schedule to make a decision by 2015. The agency is now almost three years behind the interim deadlines it had set in 2009.

This type of delay is far from unusual. Reviews of other high-profile pesticides such as atrazine, chlorpyrifos and imidacloprid, to name a few, are also years behind schedule, as the agency labors to ensure its scientific assessments are both comprehensive and accurate.

**'Good Faith.'** Smith, however, is questioning whether the delays for glyphosate are due to the voluminous workload or to other ideologically motivated factors.

In his letter to McCarthy, he pointed to personal connections between an anti-pesticide activist and a top EPA official, as well as to indications that EPA staffers were more involved in the WHO review than originally thought. A spokeswoman with the WHO's cancer research agency declined to comment for this story.

"The recent developments ... only serve to further sustain the notion that EPA is not acting in good faith," Smith wrote.

Smith's committee has aggressively investigated other government scientists whose work on climate change clashes with his own skeptical views, going as far as to issue subpoenas forcing them to relinquish their data.

The committee has not yet taken this step in the glyphosate matter. But Smith did renew a request he made earlier this year and asked EPA to make available Jim Jones, the EPA's top chemicals regulator, and two other agency staffers for private, transcribed interviews with committee staffers.

"The chairman is hopeful that EPA will provide these individuals voluntarily, so is not considering use of compulsory process at this time," committee spokeswoman Kristina Baum told Bloomberg BNA in an e-mail.

By DAVID SCHULTZ

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A copy of Chairman Smith's Oct. 25 letter to the EPA is available at <http://src.bna.com/jEV>.

## Endangered Species

### Two Populations of Salmon, Steelhead to Get More Proposed Protections From Hydropower

**T**he long-running tensions over hydroelectric dams and fish in the Columbia River and Snake River basins may be ratcheted up again Oct. 27 when the National Marine Fisheries Service releases its proposed recovery plan for two regional populations of the fish.

Operations of eight large federal hydroelectric dams on the Columbia and Snake rivers already are managed in ways intended to maximize salmon and steelhead species health, a strategy that can at times conflict with optimal electric power production.

More of that conflict is likely and has already been signaled by the fisheries service.

The agency released a draft version of the proposed recovery plan in July for the Snake River spring and summer Chinook salmon and Snake River steelhead, both populations listed as threatened under the Endangered Species Act. It remains to be seen how closely the proposed version will stick to the draft proposed version.

A spokesman for the Northwest Power and Conservation Council said the four-state intergovernmental policy council was awaiting release of the proposed recovery plan before it could offer any comment. The group had not yet seen the contents of the proposed plan, he said.

**Spilling Water for Fish.** The draft said a number of actions should be taken to improve hydropower management strategies for the fish, including increasing the flow rates of water at times of year when the water can best help the fish by cooling downstream water and moving young fish farther along in their downstream journey toward the Pacific Ocean.

The draft said more steps should be taken to improve fish survival during passage of the Columbia and Snake dams. An example of another step was the completion this year of an intake structure at Lower Granite Dam to add cooler water to a fish ladder that adult salmon climb on their journey inland to reproduce.

The draft also said the government should implement actions prescribed by agreements regarding operation of individual tributary dams.

The recovery plan is limited to the Snake and Columbia basins below Hells Canyon Dam. Above Hells Canyon, some populations of salmon died out when the dam in the canyon prevented them from reaching the ocean.

"Research is ongoing through the Hells Canyon Complex relicensing process to examine the risks and feasibility of providing passage and reintroducing Chinook salmon and steelhead into historical habitats in blocked areas above Hells Canyon Dam," the draft said.

Three agencies operate the federal dams on the Columbia and Snake—the Bonneville Power Administration, the U.S. Army Corps of Engineers and the Bureau of Reclamation.

**Estuary Protections Wanted.** Dams are not the only problems for fish on the Columbia and Snake rivers. The draft version of the proposed plan also said actions should be taken to improve salmon and steelhead survival in the Columbia River estuary.

Estuary management strategies listed in the draft included identifying and reducing sources of pollutants, protecting and restoring river banks and the breaching or lowering of dikes and levees.

The estuary strategies can pose problems for commercial and residential property owners or would-be owners and the sources of various pollutants.

In the Columbia River and Snake River basins, there now are 14 populations of salmon and steelhead listed for protection under the Endangered Species Act. The estuary of the Columbia also is part of the designated critical habitat for another threatened fish, the green sturgeon.

The proposed plan will be available for public comment until Jan. 5. Comments can be e-mailed to nmfs\_snakeriver\_sschr\_st\_plan.wcr@noaa.gov.

By ALAN KOVSKI

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*The Federal Register notice on the fish recovery plan is available at <http://src.bna.com/jEN>*

*The proposed recovery plan will be available starting Oct. 27 at <http://src.bna.com/jEF>.*

## Drinking Water

### EPA Mulls Idea of Replacing Lead Service Lines in Entirety as Part of Rulemaking

**E**PA wants to get the lead out. All of it. Replacing lead service lines in their entirety is among the regulatory options the Environmental Protection Agency is mulling as part of its upcoming revisions to the lead and copper rule.

A white paper released by the agency Oct. 26 said lead service line replacement is among the options being considered for addressing drinking water contaminated with lead leaching from old pipes and plumbing fixtures and outlined the related challenges and opportunities.

Cost and equity issues involved in paying for such an undertaking top the agency's list of concerns along with complications arising from the shared ownership of lead service lines. Public water utilities are responsible for lead service lines from the water main to a property owner's boundary. Beyond that, it is the homeowner's responsibility.

The federal agency has been under pressure to propose revisions to the lead and copper rule earlier than the planned date of 2017, following the Flint, Mich., crisis that left the city of 100,000 exposed to high levels of lead in their drinking water. The contamination resulted when the state switched Flint's drinking water source without adding the requisite corrosion controls, causing lead in the aging service lines to leach out into tap water.

The EPA estimates it could cost \$2,500 to \$8,000 to replace the full service line to a typical home, which includes the portion on public land and the part on the customer's property. On a national level, EPA estimated the range at \$16 billion to \$80 billion.

**Advisory Council Recommendations.** The EPA said it developed many of the options based on recommendations from the agency's National Drinking Water Advisory Council in late 2015, the Science Advisory Board in 2011, and the national experience in carrying out the requirements of the existing rule, the recent experience in Flint, Mich., Washington D.C., and other cities nationwide.

Lead was widely used in plumbing materials until Congress banned its use in 1986, according to the EPA. Yet 6.5 million to 10 million homes and millions of older buildings in thousands of communities nationwide still have lead pipes and plumbing.

In evaluating full line replacement, the EPA also must consider the pace of doing the work and the mechanism for implementing and enforcing project requirements. The agency also is evaluating whether to require drinking water utilities to identify the number and location of lead service lines in their system, as DC Water already is doing in Washington, D.C.

The EPA said it was aware that not all households within a given community can afford full service line replacements. At the same time, the agency pointed to Lansing, Mich., Madison, Wis., and Boston as examples of cities where innovative approaches have been used to achieve full lead service line replacements.

"EPA is looking at this experience in the context of developing proposed revisions to the lead copper rule," the agency said.

**Technology, Health-Based Considerations.** The upcoming revisions to the 25-year old lead copper rule is expected to include both technology-driven and health-based elements that focus on proactive, preventative actions to avoid high lead levels and health risks, the EPA said.

The National Drinking Water Advisory Council advised the EPA to set a health-based, household action level that triggers a report to the consumer and to the applicable health agency for follow up. Under the existing rule, exceeding the technology-based federal action level of 15 parts per billion triggers a requirement that part of the lead pipes be replaced.

The agency is aware of the current rule's shortcomings, "including a rule structure that for many systems only compels protective actions after public health threats have been identified," the white paper said.

"EPA understands that there is no single answer or simple solution for reducing lead in drinking water," said Joel Beauvais, EPA deputy assistant administrator for water, in an Oct. 26 blog.

"However, EPA is committed to ensuring that we use best available science, carry out the most robust analyses of regulatory options and are informed by stakeholder input as we update the rule to protect the American public from lead in drinking water," he wrote.

The agency's goal is to strengthen corrosion control treatment in drinking water systems to further reduce exposure to lead and copper and to identify additional actions that will equitably reduce the public's exposure to lead and copper when corrosion control treatment alone is not effective.

To that end, the EPA said it will be guided by the following principles in pursuing its rulemaking, which include educating the public about the risks of lead exposure through drinking water, prioritizing protection for children and infants who are most vulnerable to lead



exposure, clean and enforceable standards, and an integrated approach for reducing lead exposure from “drinking water, paint, dust, soil and other potential sources of exposure.”

The Association of Metropolitan Water Agencies, which represents publicly owned water utilities, described the white paper to Bloomberg BNA as a “distilled down, concise summary” of EPA’s thinking that is largely based on the drinking water council’s recommendations.

“They aren’t breaking ground here,” said Scott Biernat, director of AWWA regulatory affairs and scientific program development. The full replacement was a recommendation that came from the council’s report.

The council based its advice on the Science Advisory Board’s report in 2011 that in turn recommended against the EPA requiring partial or full lead service line replacements as the agency revised the 1991 rule. The scientists also expressed concern at the time about the short-term spikes in lead levels in tap water following both partial and full line replacement.

The EPA as part of its rulemaking is planning to study how to address short-term spikes in tap water following full line replacement and whether to prohibit or limit partial line replacements.

BY AMENA H. SAIYID

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## Enforcement

### Workers, Witnesses Freeze Up as Justice Department Seeks Criminal Prosecutions

**O**ne year into the Justice Department’s push to prosecute employees criminally for environmental and safety violations, workers are growing leery about sharing information with investigators, a panel of industry attorneys said Oct. 26.

The new fear is that any comments could later be used to prosecute those who made them, years after the fact, even if the comments are made in a state of shock or in the wake of a catastrophe that isn’t even remotely understood yet, such as a toxic waste spill, chemical fire or power plant explosion.

If workers refuse to talk about what they’ve witnessed, the department’s effort could have the unintended consequence of hindering federal, state and internal company investigations after incidents, said Mark Farley, an attorney with Katten Muchin Rosenman LLP, at a conference sponsored by the American Bar Association.

The trend will intensify, too, as Justice Department attorneys begin criminally prosecuting employees, putting even more fear into workers and making them even more reluctant to provide information, Krystal Bowen, an attorney with Sheppard, Mullin, Richter and Hampton LLP, said during the panel.

In September 2015, Deputy Attorney General Sally Yates issued a memo calling for greater individual accountability for corporate wrongdoing.

**Outside Counsel Hampering Investigations.** Another outgrowth of that memo has been that companies are advising their workers to retain individual counsel, Farley said. But outside lawyers typically advise their clients not to submit to interviews until their legal exposure can be ascertained, creating “a huge time delay built into the process that otherwise wouldn’t exist,” said Farley. Critical information can be lost in that time, he said.

Moreover, companies are making the decision to call in outside counsel sooner and sooner in the investigation process, as U.S. Attorneys’ offices and Justice agents move in aggressively to scoop up the work product from other agencies on the scene, Farley said. That trend, too, usually impedes investigations, he said.

“That is a terrible, terrible development from a public policy perspective,” Farley said.

**CSB Confirms Trends.** Panelist Vanessa Sutherland, chairperson of the Chemical Safety Hazard and Investigation Board, confirmed that the trend is happening.

“The irony is, as we see more and more civil and criminal enforcement activity, it actually erodes our mission” of gathering information so that similar accidents can be prevented in the future, Sutherland said.

Historically, the CSB has always told workers that they should feel free to share everything they know with the agency. Post-Yates memo, however, agencies like the CSB and the National Transportation Safety Board—which don’t have regulatory or enforcement authority—will have to fine-tune their message so that workers know there’s a possibility that, years after the event, their testimony could be used for criminal or civil enforcement, Sutherland said.

“Fingers crossed that we’ll figure that out because we want to be a good partner” with other federal agencies, Sutherland said.

Until then, “everybody should have their eyes open when they talk to CSB investigators,” cautioned panelist Gregory Linsin, an attorney with Blank Rome LLP.

**Justice Eyes Environmental Management.** Speaking at the same event, John Cruden, assistant attorney general for Justice’s Environment and Natural Resources Division, said the department is looking increasingly at whether the companies it investigates have in place environmental management systems. The International Organization of Standard’s ISO 14000 program is one example of such a system.

Such a system typically lays out an organization’s environmental goals and impacts, and establishes internal monitoring and measurement programs.

Justice hasn’t fully thought through how it will weigh the existence or non-existence of such a program, or how well a company is living up to it, Cruden said.

“But it’s good to have something,” Cruden said. “It’s better than nothing.”

**Worker Safety Cross-Training.** He further said Justice is continuing to flesh out a policy change made last December, as Cruden’s division has taken responsibility for criminal prosecutions of Occupational Safety and Health Act violations.

Justice has been coordinating with OSHA to develop a standard procedure for a settlement framework, Cruden said. Further, OSHA inspectors and Environmental Protection Agency personnel are continuing to receive cross-training in each others’ jurisdictions, so

OSHA inspectors can identify environmental problems and so forth, according to Cruden.

He also said that "information sharing has accelerated case development and helped to identify additional industries or industrial activities that may be under an agency's jurisdiction or violations that have historically gone unenforced or under-enforced."

The Environmental and Natural Resources Division is also ensuring that each case referral it receives is reviewed for possible worker safety concerns, Cruden said.

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The text of John Cruden's speech is available at <http://src.bna.com/jEQ>.

## Water Resources

### Water Releases Urged for Part of Colorado River Delta Along U.S.-Mexico Border

**A** pilot program to release 340 billion gallons of water along the U.S.-Mexico border brought vegetation and bird life to normally parched areas of the Colorado River Delta, and the plan should continue as the countries negotiate renewal of a bilateral agreement, the International Boundary and Water Commission reported.

In the past decade, Mexico and the U.S. have made an effort to address the degraded environment along the border near Yuma, Ariz., caused by 70 years of reclamation projects along the Colorado River that reduced its delta by 90 percent.

The governments negotiated the pact in 2012 under the 1944 Treaty for the Utilization of Waters of the Colorado and Tijuana Rivers and the Rio Grande. In addition to the flow releases, which run through the end of next year, the agreement addresses water sharing between countries, surplus creation, shortage strategy, investment and conservation.

"We would see those deliveries modified to produce greater environmental benefits for the amount of water that we use," Jennifer Pitt, U.S. co-chairwoman of the environmental flows team of the binational agreement, called Minute 319, said Oct. 25.

**Sharing Water.** The pilot called for releasing 158,088 acre-feet of water (340 billion gallons). In the spring of 2014, some 105,392 acre-feet were released into the Colorado River Delta. An additional 52,696 acre-feet of base releases are ongoing through Dec. 31, 2017.

The report said staggered "pulse flows" mimicking seasonal spring surges increased "greenness" on the parched landscape and helped recharge regional aquifers.

In the future, the report said, re-establishing native vegetation such as cottonwood, willow and baccharis will require "active management," including base flows and removal of non-native vegetation such as tamarisk.

The report was completed in May and publicly released Oct. 19.

By STEPHEN SICILIANO

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The *International Boundary and Water Commission* report is available at <http://src.bna.com/jDi>.

## Enforcement

### Criminal Prosecutions Based on EPA Investigations Down by Half From 2011

**C**riminal prosecutions based on Environmental Protection Agency investigations are down by half compared to five years ago and at the lowest level in two decades, according to Justice Department data.

The latest available data show 81 federal environmental crime prosecutions in the first 11 months of fiscal 2016, or 88 for the year if the same pace continued through the end of the fiscal year.

That would be a 20 percent decline from 110 such cases in fiscal year 2015 and a 51.6 percent decline from 182 cases in 2011, according to information the Transactional Records Access Clearinghouse (TRAC) obtained under the Freedom of Information Act from the Executive Office for United States Attorneys.

The number of federal environmental prosecutions has never been lower than in 2016 in the past two decades. The peak was 198 prosecutions in FY 1998, said TRAC, a data research organization at Syracuse University.

Budget cuts and a focus on higher-impact cases are factors behind the trend, according to the EPA. Some former criminal enforcement officials say the agency at the same time has declined to put adequate emphasis on the criminal side of its work.

**EPA's View.** "In recent years, budget cuts require EPA to make hard choice across the board, and enforcement is no different," EPA spokesman Nick Conger told Bloomberg BNA. "The reality of budget cuts means we must be strategic in how we use our resources, which may result in doing fewer lower priority cases. This does not reflect a lessening of our commitment to enforcement, but our decision to continue to do what's necessary to tackle the largest, highest impact cases."

The budget for the EPA Office of Enforcement and Compliance Assurance, which includes the agency's criminal division, was down from \$597 million in fiscal year 2010 to \$544 million in fiscal year 2015, a nearly 9 percent reduction not counting adjustment for inflation.

"EPA continues to focus on vigorous civil and criminal enforcement for the cases that have the highest impact on protecting public health and the environment, and we have made the strategic decision to tackle the biggest violating sources first," Conger said by e-mail.

He said major criminal cases in 2016 included sentencing in February in the Freedom Industries case for the 2014 Elk River chemical spill and the sentencing of a Texas man in a renewable fuels case that involved \$87 million in restitution.

**Priorities at EPA.** Doug Parker, who retired as director of the EPA Criminal Investigation Division earlier this year, said the EPA has worked to focus on the most

significant cases, but added that the agency could have done more to make criminal enforcement a priority despite budget cuts.

"You have to make hard decisions about cutting resources elsewhere," Parker told Bloomberg BNA. "But they haven't done that."

The Pollution Prosecution Act of 1990 established that the EPA should have at least 200 criminal agents. That number has declined, and EPA officials have ignored the advice from Parker and others to bring it up to the level Congress intended, he said.

During the Obama administration, the EPA's leadership "has not made getting resources and maintaining a robust criminal enforcement program anything close to a priority," he said.

Ivan Vikin, who was special agent in charge of the U.S. EPA Criminal Investigation Division in Dallas from 2009 to 2015, said he observed cuts in technological and legal support in the last two to three years of his career. He told Bloomberg BNA that EPA headquarters did not put enough emphasis on criminal enforcement.

"The fear of being criminally prosecuted is being lost, and what I think suffers is the environment and public health," he said.

**Other Federal, State Data.** The data obtained by TRAC showed that during the Obama administration, 23.9 percent of EPA referrals to the Department of Justice involved businesses, and the rest were individuals accused of environmental crimes.

The numbers showed that the Eastern District of Louisiana (New Orleans) ranked first among the nation's 94 federal judicial districts with nine environmental prosecutions in the first 11 months of FY 2016, with the Western District of Louisiana (Shreveport) second with seven and the Southern District of Florida (Miami) third with five.

Michael Daniels, criminal enforcement counsel with the Louisiana Department of Environmental Quality, said his state has particularly close cooperation between federal and state criminal investigators.

"We probably of any state agency have the best working relationship with our EPA criminal investigation agents," Daniels told Bloomberg BNA.

"We open the door to them. We work with them," he said, adding that such cooperation resulted in successful prosecutions.

BY RENEE SCHOOF

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## Pesticides

### **Bayer Agrees to First-of-its-Kind Agreement Over Pesticide Ads**

**G**lobal pesticide manufacturer Bayer CropScience LP will pay Massachusetts \$75,000 and change its advertising practices to settle allegations that it misled consumers about the risks its lawn and garden products pose to bees and the environment.

The agreement between Bayer CropScience and the Massachusetts attorney general is believed to be the

first-of-its-kind enforcement action targeting false advertising claims by a manufacturer of pesticides containing synthetic chemicals known as neonicotinoids. The company is a division of Bayer AG.

"Bayer made numerous misleading claims to consumers about the safety of its pesticide products, including falsely advertising that they were similar to giving 'a daily vitamin' to plants, when in fact, they are highly toxic to honey bees, other pollinators and species, and the environment," Massachusetts Attorney General Maura Healey said in a statement Oct. 26.

Healey brought the action under the state's Consumer Protection Act.

Consumer group Beyond Pesticides said it has sent a letter in the wake of the Bayer agreement with Massachusetts to the other 49 state attorneys general calling on them to take similar action to halt the use of what it called "misleading and fraudulent" pesticide advertising.

**Company Settled to Avoid Litigation.** Bayer spokesman Jeff Donald told Bloomberg BNA Oct. 26 the firm's crop science division believes the advertising related to the products involving neonicotinoid chemistry was "at all times accurate and transparent." He said the firm agreed to settle the action to avoid the time and cost associated with litigation.

The assurance of discontinuance requires that Bayer refrain from any reference or claim that the products are safe, environmentally friendly, non-toxic or won't harm bees or other pollinators, unless the company can substantiate the claim. The accord was filed Oct. 26 in Massachusetts Superior Court for Suffolk County (*Massachusetts v. Bayer CropScience LP*, Mass. Super. Ct., No. 16-3269G, 10/26/16).

Healey's office said that a investigation by her office of Scotts Miracle-Gro for similar allegations was discontinued after that company opted to phase out neonicotinoids from its law and garden consumer product line earlier this year.

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## Hydraulic Fracturing

### **Anadarko Forges New Deal on Use Of City Wastewater in Fracking**

**A**nadarko Petroleum Corp., has renegotiated the final annual payment it owes the city of Aurora, Colo., as part of a five-year, \$9.5-million contract allowing it to use the city's "used" water to frack oil and natural gas wells.

Facing tepid revenues due to low energy commodity prices, Anadarko reached an agreement with Aurora Water, the city's supplier of water, sewer and stormwater services, to spread payments for the \$2,025,915 it owes throughout 2016, 2017 and 2018 instead of in full this year per the original contract.

The Houston-based producer, one of the most active drillers in Colorado's productive Denver-Julesburg Basin, reported \$2.2 million in losses last year in the slumping natural gas and oil market, Robin Olsen, spokeswoman for the company in Denver, told Bloomberg BNA Oct. 25.

**Company to Buy Water.** Anadarko entered into an agreement with Aurora in 2012 to purchase water pumped into the South Platte River after being treated at the city's Robert W. Hite Treatment Facility.

The agreement allowed Anadarko to purchase the water for five years at a rate of 1,500 acre-feet a year, Lisa Darling, South Platte program manager for Aurora Water, told Bloomberg BNA Oct. 25. The company uses the water for hydraulic fracturing and other drilling activities.

Fracking involves the high-pressure injection of large amounts of water, sand and chemicals into tight shale formations deep underground to stimulate the production of natural gas and oil trapped there.

The city council's water policy committee tentatively approved the renegotiated agreement Oct. 13, Darling said. The full council will consider it in late November or early December, she added.

"Anadarko has recently undergone significant economic set-backs, due to the steeply declining price of oil. As a result, drill rigs have been laid down and oil production in Weld County has virtually ceased," city documents said.

The company will buy water at the rate of 500 acre-feet a year under the new arrangement. Included with the deal was a contract incentive providing Aurora with 150 shares of Anadarko's rights to the Lupton Meadows Ditch Co., a value of about \$1.4 million in water rights. Aurora will obtain ownership of the ditch, Darling said.

**'Good for Both Parties.'** "Our partnership with the City of Aurora is very similar to the work we've done with our service providers to improve efficiencies, and our cost structure during a challenging commodity price environment," Olsen said in a statement.

"The agreement we've reached works well for both parties, as it provides Aurora with additional value that can be used at the city's discretion, including stabilizing residential water bills, and it enables us to have the flexibility around volume, location and timing of delivery that best aligns with our operational needs," she said.

Agreements between cities and oil and gas producers operating in the DJ Basin such as Anadarko and Noble Energy use water that could be used for other beneficial purposes such as farms, recreation, fish and other aquatic wildlife, Rob Harris, senior staff attorney with Western Resource Advocates, an environmental group in Boulder, told Bloomberg BNA Oct. 26.

**'Deep Pockets.'** "Oil and gas has very deep pockets," he said, adding that he has seen estimates that Anadarko paid four times the market rate for the used water it agreed to purchase from Aurora. "There are bigger issues for the public to consider, like whether or not fracking is the best use of water in a dry region and in a dry time. Downstream junior water-rights holders, such as a farmer in Brighton or Weld counties, may not get what they need to water their crops."

Olsen said aggregate use of water by the oil and gas industry represents a minuscule amount—about 0.1

percent—of total water use in Colorado. "They like to pick on our industry, but it's such a small number when you put it into the context of other water users, such as agriculture and mining."

Harris said the 0.1 percent figure might be correct, but such a number is "not useful." It's the equivalent of annual use by Lakewood, one of Denver's larger suburbs, he said. "It implies it's a de minimis amount, which is not correct."

BY TRIPP BALTZ

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Information about Aurora's City Council meetings is at [https://www.auroragov.org/city\\_hall/mayor\\_\\_\\_\\_city\\_council/council\\_meetings/](https://www.auroragov.org/city_hall/mayor____city_council/council_meetings/).

## Climate Change

### Exxon Suffers Fresh Setback in New York Court in Climate Fight

**E**xxon Mobil Corp. suffered its second setback in three days in a New York court as a judge rejected its claim that audit documents sought in a climate change fraud probe were protected by a so-called accountant-client privilege (*People of New York v. PricewaterhouseCoopers LLP*, N.Y. Sup. Ct., No. 451962/16, 10/26/16).

Exxon must surrender all relevant documents to comply with New York Attorney General Eric Schneiderman's investigation into whether the company misled investors and the public about the impact of climate change on its business, Justice Barry Ostrager ruled Oct. 26 in state court in Manhattan. Exxon said it will appeal.

Exxon misinterpreted Texas law by claiming such a privilege exists for documents held by PricewaterhouseCoopers LLP, Ostrager ruled, adding that it wouldn't have made a difference in the politically charged case because New York law should apply to Schneiderman's subpoena. The judge had ordered the company on Oct. 24 to turn over the documents without ruling on the privilege issue.

Schneiderman said he looks "forward to moving full-steam ahead with our fraud investigation of Exxon."

The attorney general is seeking files related to PwC's audits of Exxon, including documents about accounting and reporting of oil and gas reserves, evaluation of assets for potential impairment charges or write-downs, energy-price projections and projected carbon-cost estimates, according to court papers.

"We respectfully disagree with the court's ruling and intend to take an immediate appeal," Exxon's spokesman, Alan Jeffers, said in an e-mail.

**A Million Documents Provided.** Exxon has already provided more than a million documents to comply with an initial subpoena from Schneiderman's office in November 2015, according to court records. The dispute over accounting privilege emerged as part of a second subpoena issued in August relating to the company's oil and gas reserves.

The probe was triggered by questions surrounding Exxon's decision to forgo a write-down on the value of oil fields during a global collapse in prices. The price drop prompted other producers around the globe to write down the value of assets by about \$200 billion since 2014, according to Schneiderman's filing.

By ERIK LARSON

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## Energy

### Mexico Energy Reform Seen Adding \$1 Trillion to Economy by 2040

**T**he opening of Mexico's energy industry to private oil producers and power generators will add more than \$1 trillion to the country's economy by 2040, according to a report by the International Energy Agency.

Mexico, on pace for a 12th-consecutive year of oil production declines, will see output bottom out in 2018 before climbing to 3.4 million barrels a day by 2040, largely due to new projects in the deep waters of the Gulf of Mexico. Investment in new upstream projects, as well as in the power and energy efficiency sectors, will drive economic growth, according to the agency's Mexico Energy Outlook report presented Wednesday in Mexico City.

"The main source of future growth is anticipated to come from deep water fields" which "account for almost half of Mexico's projected offshore oil output by 2040," according to the report. "This is a new frontier for Mexico where Pemex has less experience and where other players are anticipated, alone or in partnership with Pemex, to play a prominent role."

Petroleos Mexicanos, Mexico's state-run energy company, is seeking its first-ever deepwater partnership in the Trion field. It will hold an auction on Dec. 5 to determine who will work with the state-owned oil company to develop the area. The IEA also forecasts increased crude production in shallow water and onshore fields, as well as further downstream investment, including upgrades to refinery units to help reduce gasoline imports.

"The challenge for Mexico is to turn into reality the positive predictions presented by the IEA," Mexico Energy Minister Pedro Joaquin Coldwell said in a statement.

**Increased Demand.** Mexico's economy is forecast to grow an average 3.1 percent between 2015 and 2040, boosting the country's energy and electricity demand, according to the report. The IEA sees Mexico's total energy demand increasing by 20 percent by 2040, particularly in natural gas and renewables, while oil's share in the country's matrix will fall to 42 percent from its current level of 51 percent.

Mexico's natural gas demand will grow by 1.3 percent per year, while renewable energy growth will be driven by increased wind and solar power generation,

the IEA said. The IEA forecasts that Mexico's total gas production will rise to 60 billion cubic meters, though the country will remain "a sizeable" importer of gas from the U.S. through 2040.

"Gas remains the dominant source of power, accounting for around 60 percent of total electricity generation over the projection period, as additional capacity and import infrastructure become available," the report showed. "As Mexico's natural gas use increases, so does the importance of good interconnections and market operation, and gas storage to meet fluctuations in demand."

The IEA forecasts Mexico's electricity demand to grow by 85 percent, an average annual rate of 2.4 percent, between 2014 and 2040. The country's energy generation mix will become "increasingly diverse and less reliant on fossil fuels," with the share of fossil fuel-based power generation seen falling to 58 percent in 2040 from its current level of 79 percent.

"Energy demand in Mexico has historically been highly correlated to economic growth and, although this relationship is set to weaken in the future, GDP will remain an integral contributor to energy demand," according to the report.

By ADAM WILLIAMS AND AMY STILLMAN

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## Enforcement

### EPA Enforcers Inquire Into Dicamba Misuse, Missouri Complaints Tied to New Seed Varieties

**A** flurry of complaints of crop damage from misuse of herbicides containing Dicamba led the Environmental Protection Agency to open a criminal investigation in a four-county area of southeastern Missouri.

The complaints also could lead to action in the Missouri statehouse in the coming legislative session to impose larger fines on violators.

Around 41,000 acres of soybeans and other crops have been damaged by Dicamba, a herbicide used to control broadleaf weeds and woody plants, which is highly volatile and prone to spread beyond the intended field through drift and vapor volatility, EPA said in an Oct. 25 statement.

The Missouri Department of Agriculture has received more than 100 complaints of pesticide drift since June, mostly within Cape Girardeau, Dunklin, New Madrid and Stoddard counties in the bootheel region of southeastern Missouri, EPA said. Investigators are looking into possible violations of the Federal Insecticide, Fungicide and Rodenticide Act.

**Allowable Uses.** Current allowable uses for Dicamba products are limited to pre-plant and post-harvest burn-down applications, and do not include direct application to growing crops. But the recent release by Monsanto Corp. of Dicamba-tolerant cotton, soybean and



corn varieties appears to have led farmers in the bootheel region into temptation, according to Rep. Don Rone, a bootheel Republican who intends to address the issue in the 2017 legislative session.

The problem is that EPA approved Monsanto's Dicamba-tolerant seed varieties without approving its new formulation of Dicamba, which is designed to be less volatile and prone to drift, Rone said. As a result, some farmers who were early adopters of the new varieties and who wished to profit by the new seeds' Dicamba tolerance appear to have resorted to generic versions of the herbicide that are very volatile and prone to drift, he said.

"A few farmers snuck in last year and use the new cotton variety, which had just come on the market," he said. "And because the new Dicamba formulation had not been approved yet, they went out and got generic Dicamba, the old formulation, that's worse than anything, and put that on their fields. And it worked so well for them, they, and a lot of others too, said, 'To heck with that, I'm going to use this stuff.' And this year you probably have it on more than 40,000 acres."

**Regulatory Approval.** Allison Stein, a Monsanto spokeswoman, told Bloomberg BNA that the company does not sell Dicamba-containing herbicides in the U.S., but plans to do so once it has obtained regulatory approval. She added that the company does not condone illegal pesticide application, and that it had reminded growers and dealers throughout the growing season that no Dicamba products are currently approved for in-crop use.

As for EPA, an August compliance advisory indicated that the agency is currently evaluating comments on a proposal it issued in the spring of 2016 to register Dicamba to control weeds in cotton and soybean that have been genetically modified to tolerate the herbicide. The advisory gave no further information as to when a decision on the proposal can be expected, and an EPA spokesman was not available for comment.

Figures from the state Department of Agriculture are consistent with Rone's claim that the complaints are related to the 2015 release of the new seed varieties. According to a state fact sheet, the department received just three Dicamba-related complaints during fiscal year 2015, which ended June 30, but then received 27 Dicamba-related complaints in fiscal year 2016, before receiving more than 100 in the first months of fiscal year 2017.

Rone also said he suspects that the official acreage estimates were underestimating the problem. "I'd guess its about twice that, about 80,000 acres," he said. "A lot of people down here probably decided they didn't want to inform on their neighbors, so we didn't even hear about it."

**Increased Fines.** Violators of the state's Dicamba regulations are subject to fines, but the current amounts involved, \$1,000 per affected field, are not great enough to discourage its use, Rone said.

Rone told Bloomberg BNA that he will introduce legislation in the 2017 session of the Missouri General Assembly to increase those fines substantially, to \$2,000 per field for a first offender, \$4,000 for a chronic offender, and \$25,000 for illegal uses of the product.

"I'm a farmer myself, and I'm not anti-Dicamba by any stretch of the imagination," Rone said. "But farm-

ers have to learn how to use the compound, and how to avoid hurting their neighbors."

By Christopher Brown

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The EPA statement is available at <http://src.bna.com/jEB>.

## Chemicals

### Chemical Manufacturers, Regulatory Agencies Debate Human Relevance of Rodent Tumors

**C**hemical manufacturers and regulatory agencies are wrestling with questions about whether studies that find liver tumors in chemical-exposed rodents show people may get cancer if exposed to the same chemical.

The questions affect chemical manufacturers, because toxicity studies of chemicals commonly find they cause liver tumors in rats and mice. Regulators may later rely on those studies to make chemical safety decisions and risk assessments.

For example, the Environmental Protection Agency held a meeting Oct. 26 to discuss the relevance of rat tumors to a fuel additive it's assessing called ethyl tertiary butyl ether, or ETBE. The agency's draft toxicological review of ETBE says "there is suggestive evidence of carcinogenic potential for ETBE" based on liver tumors in male rats that inhaled high doses of the fuel additive for two years.

U.S. manufacturers supplied 25 percent of the global market for ETBE in 2012, Keith Salazar, a biologist working for EPA's Integrated Risk Information System, or IRIS program, said during the agency's meeting. The EPA's chemical office has withheld specific U.S. production levels, because only two facilities in the country have made ETBE so releasing production volumes would provide market intelligence.

**General Relevance Topic of Toxicology Forum.** Traditional cancer studies show cellular changes that could lead to cancer in thousands of rat liver cells and hundreds of mouse liver cells after two years, David Malarkey, a pathologist working at the National Institutes of Environmental Health Sciences, said Oct. 24. He spoke during a program the Toxicology Forum organized to bring toxicologists and pharmacologists along with academic and corporate researchers together to discuss the human relevance of rodent tumors.

Yet despite the frequency with which these liver tumors occur in rodents, human liver tumors are rare in Canada, Europe and the U.S., said audience participants at the forum's program. "Why aren't we seeing a lot more [human] tumors?" an audience member asked.

In the U.S. the primary reasons people get liver cancer include excessive alcohol consumption and viruses such as hepatitis B virus or hepatitis C, according to information from the Centers for Disease Prevention and Control.

Rodent tumors are nevertheless relevant, said scientists representing U.S., Canadian and European regula-



tory and science agencies at the Toxicology Forum meeting.

The Food and Drug Administration generally considers a molecule “guilty until proven innocent,” said Abigail Jacobs, associate director of pharmacology and toxicology at FDA.

“We generally consider things are relevant until someone persuades us that they aren’t, and it generally takes a lot of work to persuade us,” she said.

**How Much Data is Enough?** Vincent Coglianò, director of EPA’s IRIS program, also spoke at the Toxicology Forum.

“Rodent liver tumors can be the strongest signal in animals—sometimes the only signal—of human cancer at a different site,” he said.

While rodents may incur liver tumors following chemical and other exposures, those tumors appear elsewhere in the human body, he said, describing conclusions the International Agency for Research on Cancer reached following a review of scientific studies of known human carcinogens.

Coglianò previously directed the international agency’s cancer review program that developed “monographs” identifying environmental and lifestyle exposures that may increase the risk of human cancer.

One forum audience participant cried out, “How much is enough?”

Must companies conduct millions of dollars or research to prove that liver tumor contracted by a rat or mouse is irrelevant to people?” he asked.

Forum scientists spent the next two days discussing research that could help distinguish when rodent liver tumors may signal that people could get cancer and when they don’t.

**Specific Relevance Topic at IRIS Meeting.** Participants in EPA’s science meeting discussed both research and policy decisions.

Jim Bus, a toxicologist at the consulting firm Exponent Inc., said there is no human relevance to the particular rat liver tumors that the EPA used as the basis of its conclusion on the suggestive carcinogenicity of ETBE.

Bus based his conclusion on multiple lines of evidence including that the liver tumors occur only at a dose that was so high—5,000 parts per million—that it overwhelmed the rats ability to clear, detoxify or otherwise protect itself. He compared the situation to a ship that got a hole so large in its bow that the ship’s pump could no longer remove the water and the craft sank.

The concentration of ETBE used in the primary study the agency used exceeded any dose that would be acceptable under current EPA guidelines or those issued by the Organization for Economic Cooperation and Development, Bus said.

Lower doses, even one that exposed the rats to 1,500 ppm, did not cause any changes that would indicate carcinogenic potential, Bus said.

Occupational exposures, estimated to be about 0.1 ppm in Japanese studies where ETBE is used, show that people are exposed to vastly lower concentrations even

when they work in situations where exposure could occur, Bus said.

A cancer descriptor of ‘not likely to be carcinogenic in humans’ is Justified for ETBE, Bus said.

Kathryn Guyton, a scientist at IARC, and Ivan Rusyn, a professor and toxicologist from Texas A&M University, each said the EPA cannot simply ignore the liver tumors.

“I don’t think you can argue the dose was too high—throw it out,” Rusyn said.

A problem the agency faces, however, is that it has scant “mechanistic” or detailed biological data to determine whether the biological changes that occurred in the rats were relevant to human cancers, he said.

The EPA’s Science Advisory Board is convening an expert panel to peer review, or critique, the scientific basis of the agency’s draft ETBE assessment on a yet-to-be-determined date. A Federal Register notice to be published Oct. 27 requests nominations of experts to serve on that panel.

BY PAT RIZZUTO

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Information about the EPA’s draft fuel additive assessment is available at <https://www.epa.gov/iris/iris-public-science-meeting-oct-2016>. EPA’s request for scientists to peer review that assessment is available at <http://src.bna.com/jFG>.

## Chemicals

### PODCAST: What the New Chemicals Law Means for You and Me

**T**his summer, Congress passed a major overhaul of the law that allows the EPA to regulate toxic chemicals, the Toxic Substances Control Act. The overhaul became law after years of tough political wrangling on Capitol Hill, and it was ultimately hailed as one of the most significant pieces of environmental legislation in a generation.

So, what does this all mean for you and me?

On the latest episode of our podcast, *Parts Per Billion*, we find out how this new law will affect the average consumer by talking to an attorney with an environmental activist group and a consumer products industry leader. They have differing opinions on how the law’s overhaul will affect the chemicals industry and whether it was even necessary in the first place.

To listen to the latest episode, click here: <http://www.soundcloud.com/partsperbillion/tsca>.

BY DAVID SCHULTZ

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# Special Report

## Regulatory Policy

### **Courts, Not Congress, Must Restore Balance to Lopsided Regulatory State: Senator**

**L**egislation to slow or stop the perceived onslaught of regulation from “unaccountable” federal agencies over the past eight years has consistently failed, but one Republican senator thinks he knows a better solution.

“Obviously the courts have to be the one to do it,” Sen. James Lankford (R-Okla.) told Bloomberg BNA. “Now we could do it legislatively, but you tell me which president is willing to sign a [bill] that takes power away from the executive branch.”

An analysis by Bloomberg BNA of all legislation introduced by Republicans since the 111th Congress that would alter the rulemaking process for federal agencies shows a total of 163 bills, none of which have been presented to President Barack Obama for his signature.

In the past four sessions of Congress, the House introduced 95 regulatory bills and the Senate introduced 68. At their most active, Republicans introduced 55 regulatory bills in the 112th Congress, and at their least active, introduced just 10 bills in the 111th Congress.

**Integral Part of Policy Agenda.** But slowing, stopping or repealing regulations remains an integral part of the Republican policy agenda, both at the presidential and congressional levels. On the campaign trail, Republican presidential nominee Donald Trump frequently calls for overturning federal regulations.

Legislation that consistently represents the Republican position on regulatory overhaul is the Regulations from the Executive In Need of Scrutiny (REINS) Act, which has been introduced in each of the past four congressional sessions.

The principle of the REINS Act, which is that Congress should approve all major regulations, was included in the 2016 Republican Party platform.

Requiring Congress to approve all major rules also is the centerpiece of the regulatory policy agenda proposed by House Speaker Paul Ryan (R-Wis.). Ryan in June unveiled the portion of the GOP’s “Better Way” agenda that promises substantial action in 2017 to hobble agency rulemaking.

**History as Guide.** But if history is any guide, Ryan’s legislative proposals to overhaul the regulatory process are doomed to fail just like their predecessors.

The analysis by Bloomberg BNA shows that not a single regulatory bill was considered on the Senate floor in the past eight years, including the last two years under Republican control. The House has passed a total of 18 bills, including eight so far in the 114th Congress.

Even the highly touted REINS Act has yet to be considered in committee in the Senate. And the REINS Act

is not the only bill that has been passed in the House session after session, only to die at the Senate’s doorstep.

Also, the White House last year threatened to veto such legislation. “This radical departure from the long-standing separation of powers between the Executive and Legislative branches would delay and, in many cases, thwart implementation of statutory mandates and execution of duly-enacted laws, create business uncertainty, undermine much-needed protections of the American public, and cause unnecessary confusion.”

Perennial GOP favorites include the Regulatory Accountability Act, the Searching for and Cutting Regulations that are Unnecessarily Burdensome (SCRUB) Act, and the Sunshine for Regulatory Decrees and Settlements Act.

**Looking to the Courts.** Instead of trying to coalesce 60 votes around a small legislative fix, Lankford, chairman of the Senate Homeland Security and Governmental Affairs Subcommittee on Regulatory Affairs and Federal Management, called for a judicial response to the issue of Chevron deference, a court decision that he said tipped the balance of power to the executive branch.

In 1984, the Supreme Court in *Chevron v. Natural Resources Defense Council* held that courts should defer to agency interpretations of statutes unless they are unreasonable.

“I think that decision has proved to be toxic to the relationship between the three branches of the federal government and the American people,” Lankford said.

“The courts messed this up—they’re going to have to help re-establish it,” Lankford said, referring to the correct balance of power among the three branches of government.

**Preserving the Status Quo.** Lankford also has held 12 hearings on regulation over the past two years alongside the subcommittee’s ranking Democrat, Sen. Heidi Heitkamp (N.D.).

The politically unlikely pair of senators has delved deeply into the minutiae of the Administrative Procedure Act, which is the statute that dictates agency rule-making processes.

Although both have co-sponsored several bills and ushered a few through committee, Lankford acknowledged in an interview in September that none were likely to pass, in large part because Democrats have no reason to change the status quo.

“They don’t have to pass anything,” Lankford said. “If they want to get something done, a lot of the executive agencies just redefine old laws in new ways, use their deference and then just take off on it.”

**No Agreement on Problem.** Robert Weissman, president of Public Citizen, a public interest advocacy organization, said he fundamentally disagreed with the premise that there is a “problem” with the rulemaking process that needs to be resolved.

Or, the problem is that corporations aren't held accountable, regulation is incredibly slow to get out the door and the system is massively tilted on behalf of regulated industries, which is not what the Republican bills address, Weissman said.

"I think their constant pounding does create on Capitol Hill, at least among some people, a misperception that maybe there actually is a problem," Weissman said.

Republicans often point to thousands of pages in the Federal Register and billions of dollars in regulatory costs that they say kill jobs and slow economic growth as evidence of a problem.

**Evidence in Dispute.** But Weissman said an examination of the evidence shows it's not even a close call. "These are invented and untrue claims," he said.

For example, an analysis of the costs and the benefits of major rules—even calculated by corporate-friendly terms—shows that the costs of regulation are massively outweighed by the benefits, Weissman said.

And for the last century, apocalyptic claims by businesses that a certain rule will destroy either the economy or an entire industry just haven't happened, Weissman said.

Benzene regulation was going to shut down the whole petrochemical industry, which didn't happen, Weissman said. And while the current focus is on coal, changes in the energy markets and the price of natural gas are far more significant than regulation in diminishing the use of coal, he said.

**Two Types of Problems.** Jerry Ellig, senior research fellow at the Mercatus Center at George Mason University, argued that there are two types of problems with the rulemaking process.

"These are problems that actually regulatory reformers have been wrestling with for decades trying to find solutions," Ellig said.

One set of problems is that many times, new regulations are poorly thought out and so don't address a demonstrated problem, or they are broader than they need to be to address the real problem, or they are very costly compared to the problem they're dealing with, Ellig said.

The other problem is, there isn't a really good, organized process to go back and evaluate seriously whether regulations are accomplishing their intended goals and whether they're doing so at a reasonable cost, Ellig said.

**Grappling for Solutions.** Ellig said that "some bills" in Congress were probably intended to be messages or signals to the regulatory agencies rather than legislative solutions.

On the other hand, regulation and the regulatory system are horrendously complicated and members of Congress have constituents who are complaining about the end result, Ellig said. Lawmakers are trying to figure out what levers to push to solve their constituents' problems, which is not obvious because the system is so complicated, he said.

"There is an awful lot of trying out" different ideas to see which ones "might actually work to fix the process," he said.

By CHERYL BOLEN AND MADI ALEXANDER

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# Regulatory Agenda

## OCTOBER 27 FEDERAL REGISTER

The following entries are summaries from the Oct. 27, 2016, Federal Register (Vol. 81, No. 207).

## Environmental Protection Agency

### CHEMICAL REGULATION

#### Significant New Use Rules for Chemical Substances

Proposed rule of the EPA adopts regulations under 40 CFR 721.10902, 721.10913 and 721.10920 to establish significant new use rules (SNURs) under TSCA Section 5(a)(2) for three chemical substances that were the subject of premanufacture notices. The rule establishes SNURs for the chemical substances functionalized carbon nanotubes (generic) (PMN P-15-276); diisocyanato hexane, homopolymer, alkanolic acidpolyalkyleneglycol ether with substituted alkane (3:1) reaction products-blocked (generic) (PMN P-15-378); and modified diphenylmethane diisocyanate prepolymerwith polyol (generic) (PMN P-15-559). The rule requires those who intend to manufacture, import or process such substances for an activity designated as a significant new use to notify the EPA at least 90 days before doing so. The chemicals were issued direct final SNURs May 16, 2016 (81 FR 30452) that were subsequently withdrawn due to the receipt of adverse comments (81 FR 45416; 07/14/2016). Comments are due Nov. 28, 2016. Contact: Kenneth Moss; EPA, Office of Pollution Prevention and Toxics; 202-564-9232; moss.kenneth@epa.gov

### CHEMICAL REGULATION

#### Tert-Butanol and ETBE Integrated Risk Information System Assessment

Notice of the EPA Science Advisory Board (SAB) announces a request for nominations of scientific experts to augment the SAB Chemical Assessment Advisory Committee for the peer review of the draft toxicological reviews of tert-butyl alcohol (tert-butanol) and ethyl tertiary butyl ether (ETBE) to support the summary of information on the Integrated Risk Information System. The chemicals are used as fuel additives for gasoline to increase octane ratings and for a variety of industrial uses. The draft assessments include oral reference doses and inhalation reference concentrations for non-cancer effects as well as a cancer assessment. Nominations are due Nov. 17, 2016. Contact: Gina Perovich; EPA, National Center for Environmental Assessment; 703-347-8656; perovich.gina@epa.gov

### CHEMICAL REGULATION

#### TSCA Premanufacture Notices

Notice of the EPA announces the availability of receipt and status information regarding 349 premanufacture notices for new chemicals received by the agency from

June 22-30, 2016. Comments are due Nov. 28, 2016. Contact: Jim Rahai; EPA, Office of Pollution Prevention and Toxics; 202-564-8593; rahai.jim@epa.gov

### DRINKING WATER

#### Maryland Public Water System Supervision Program

Notice of the EPA announces the tentative approval of revisions to Maryland's public water system supervision program. The notice specifies that the state has adopted drinking water regulations for the Stage 2 Disinfectants and Disinfectants By-Products Rule and that the EPA has determined that the revisions are no less stringent than the corresponding federal regulations. The approval is effective Nov. 28, 2016, unless hearing requests are received by that date. Contact: Anthony Meadows; EPA Region 3, Water Protection Division; 215-814-5442

### HAZARDOUS AIR POLLUTANT EMISSION STANDARDS

#### Oil and Natural Gas Sector Control Techniques Guidelines

Notice of the EPA announces the availability of final control technique guidelines (CTG) for the oil and natural gas industry. The CTG assists state, local and tribal air agencies with determining reasonably available control technology for volatile organic compound emissions from certain sources in the oil and natural gas sector. The document is effective Oct. 27, 2016. Contact: Charlene Spells; EPA, Office of Air Quality Planning and Standards; 919-541-5255; spells.charlene@epa.gov

### PESTICIDES

#### Pesticide Tolerance Petition/2,4-D

Notice of the EPA announces the initial filing of a pesticide petition to amend regulations under 40 CFR 180 to establish tolerances for residues of the herbicide 2,4-D in or on cotton, gin byproducts at 1.5 parts per million (ppm) and cotton, undelinted seed at 0.8 ppm. The petition was filed by Dow AgroSciences, of Indianapolis. Comments are due Nov. 28, 2016. Contact: Michael Goodis; EPA, Office of Pesticide Programs; 703-305-7090; RDRFNotices@epa.gov

### PESTICIDES

#### Pesticide Tolerance Petition/Propamocarb Hydrochloride

Notice of the EPA announces the initial filing of a pesticide petition to amend regulations under 40 CFR 180.499 to increase the tolerance for residues of the fungicide propamocarb hydrochloride in or on potatoes to 0.30 parts per million. The petition was filed by Bayer CropScience LP, of Research Triangle Park, N.C. Comments are due Nov. 28, 2016. Contact: Michael Goodis;

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*Continued from previous page*

EPA, Office of Pesticide Programs; 703-305-7090; RDRNNotices@epa.gov

**PESTICIDES**

Pesticide Product Registrations/2,4-D

Notice of the EPA announces the receipt of an application to register a new use for a pesticide product containing a currently registered active ingredient. The application was submitted by Dow AgroSciences, of Indianapolis, Ind., for the active ingredient 2,4-D. Comments are due Nov. 28, 2016. Contact: Michael Goodis; EPA, Office of Pesticide Programs; 703-305-7090; RDRNNotices@epa.gov

**AIR QUALITY**

Louisiana SIP/Regional Haze

Proposed rule of the EPA amends regulations under 40 CFR 52 to approve revisions to the Louisiana SIP regarding the regional haze plan for the first planning period to address deficiencies in the best available retrofit technology (BART) determinations for four non-electric generating unit facilities. The revisions address identification of BART-eligible sources; the state's determination that Sid Richardson Addis Plant is not subject to BART; and the state's BART determinations for Phillips 66, Eco-Services and Mosaic Fertilizer facilities. Comments are due Nov. 28, 2016. Contact: Jennifer Huser; EPA Region 6; 214-665-7347; huser.jennifer@epa.gov

**AIR QUALITY**

Texas SIP/Particulate Matter Emissions and Outdoor Burning Standards

Proposed rule of the EPA amends regulations under 40 CFR 52 to approve revisions to the Texas SIP. The revisions remove provisions limiting ground-level concentrations of particulate matter emissions and allow veterinarians to use outdoor burning to dispose of animal remains. The revisions also prohibit the burning of household refuse in a limited demographic area on lots smaller than five acres, specify that knowingly or intentionally burning in such an area is a Class C misdemeanor under state law, and clarify requirements for burning at designated sites. In addition, the revisions allow prescribed burning in areas, such as where rural areas interface with urban areas, for the purpose of wild-fire hazard mitigation. Comments are due Nov. 28, 2016. Contact: Randy Pitre; EPA Region 6; 214-665-7299; pitre.randy@epa.gov

**AIR QUALITY**

Idaho/Logan PM-2.5 Nonattainment Area

Proposed rule of the EPA amends regulations under 40 CFR 52 to partially approve and partially disapprove revisions to the Idaho SIP with regard to the Franklin County portion of the Logan, Utah-Idaho, 2006 24-hour fine particulate matter (PM-2.5) NAAQS nonattainment area. The rule approves revisions concerning reasonably available control method requirements for specified stationary sources. The rule disapproves the attain-

ment demonstration based on the state's failure to satisfy attainment by the Dec. 31, 2015, attainment date, with respect to contingency measures, reasonable further progress and quantitative milestones, and motor vehicle budget requirements. Comments are due Nov. 28, 2016. Contact: Jeff Hunt; EPA Region 10, Office of Air and Waste; 206-553-0256; hunt.jeff@epa.gov

**Department of Energy****RADIOACTIVE WASTE**

Private Initiatives for Consolidated Interim Storage Facilities

Notice of the Department of Energy, Office of Nuclear Energy, announces a request for information concerning approaches for consolidated spent nuclear fuel interim storage involving private initiatives. The agency seeks input on specific questions related to the role private facility initiatives could play as part of an integrated waste management system. Comments are due Jan. 27, 2017. Contact: Andrew Griffith; DOE, Office of Nuclear Energy; 202-586-3715; PrivateISF@hq.doe.gov

**Office of Energy Efficiency and Renewable Energy****ENERGY EFFICIENCY**

Energy Conservation Standards/Residential Central AC and Heat Pumps

Notice of the Department of Energy, Office of Energy Efficiency and Renewable Energy, announces the availability of data regarding energy conservation standards for central air conditioners and heat pumps (CAC/HP). The data addresses provisional translations of the CAC/HP working group's recommended energy conservation standard levels for small-duct high-velocity and space-constrained products into levels consistent with an Aug. 24, 2016, proposed test procedure supplemental notice of proposed rulemaking (81 FR 58164). The notice requests comments on the translation of SEER and HSPF values to SEER2 and HSPF2 values shown in the notice for space-constrained and small-duct high-velocity products. Comments are due Nov. 14, 2016. Contact: Ashley Armstrong; DOE, Office of Energy Efficiency and Renewable Energy; 202-586-6590; central\_air\_conditioners\_and\_heat\_pumps@ee.doe.gov

**Federal Energy Regulatory Commission****ENVIRONMENTAL IMPACT ASSESSMENT**

Montana/Matteson Hydroelectric Project

Notice of the Federal Energy Regulatory Commission announces the filing of a declaration of intention to file a license application by Leonard Matteson for the Matteson Hydroelectric Project to be located on the Missouri River, in Cascade County, Mont. The project would consist of a water wheel located on a boat dock and placed into the river, a generating unit, a transmission line and appurtenant facilities. Comments, motions to intervene and protests are due Nov. 21, 2016. Contact: Jennifer Polardino; FERC; 202-502-6437; Jennifer.Polaridino@ferc.gov

## Nuclear Regulatory Commission

### ENVIRONMENTAL IMPACT ASSESSMENT

#### Illinois/Exelon Generating Co.'s LaSalle County Station

Notice of the Nuclear Regulatory Commission announces the issuance of renewed facility operating licenses for Exelon Generation Co.'s LaSalle County Station, in LaSalle County, Ill., and an associated record of decision. The notice specifies that the licenses for Units 1 and 2 (NPF-11 and -18) are renewed until April 17, 2042, and Dec. 16, 2043, respectively. The renewed licenses are effective Oct. 19, 2016. Contact: Jeffrey Mitchell; NRC, Office of Nuclear Reactor Regulation; 301-415-3019; [Jeffrey.Mitchell2@nrc.gov](mailto:Jeffrey.Mitchell2@nrc.gov)

### ENVIRONMENTAL IMPACT ASSESSMENT

#### Indiana/Purdue University Reactor

Notice of the Nuclear Regulatory Commission announces the availability of an environmental assessment and finding of no significant impact for renewal of a facility operating license held by Purdue University (No. R-87) for the continued operation of the Purdue University Reactor (PUR-1), located in West Lafayette, Ind., for an additional 20 years. Contact: Cindy Montgomery; NRC, Office of Nuclear Reactor Regulation; 301-415-3398; [Cindy.Montgomery@nrc.gov](mailto:Cindy.Montgomery@nrc.gov)

## National Park Service

### ENVIRONMENTAL IMPACT ASSESSMENT

#### New York/Fire Island National Seashore Breach Management Plan

Notice of the National Park Service announces the availability of a draft breach management plan and environmental impact statement for Fire Island National Seashore in New York. The plan addresses management strategies for a breach that developed within the Otis Pike Fire Island High Dune Wilderness following Hurricane Sandy in October 2012. A meeting is scheduled for Nov. 7, 2016, in Patchogue, N.Y. Comments are due Dec. 12, 2016. Contact: Kaetlyn Jackson; NPS, Fire Island National Seashore; 631-687-4770

## Bureau of Ocean Energy Management

### OIL SPILLS

#### Outer Continental Shelf/Oil Spill Financial Responsibility

Notice of the Department of the Interior, Bureau of Ocean Energy Management, announces the submission of a continuing information collection request to the OMB regarding oil spill financial responsibility for offshore facilities. The collection addresses requirements for holders of leases, permits, and rights of use and easement in the Outer Continental Shelf to submit Forms BOEM-1016 through 1025 (nonconsecutive) to ensure such entities can pay for cleanup and damages resulting from oil spills and other hydrocarbon discharges that originate from covered offshore facilities (30 CFR 553). Comments are due Nov. 28, 2016. Contact: Anna Atkinson; BOEM; 703-787-1025; [anna.atkinson@boem.gov](mailto:anna.atkinson@boem.gov)

## Bureau of Safety and Environmental Enforcement

### OIL AND GAS

#### Outer Continental Shelf Oil and Gas Well-Completion Operations

Notice of the Department of the Interior, Bureau of Safety and Environmental Enforcement, announces the submission of a continuing information collection request to the OMB regarding oil and gas well-completion operations in the Outer Continental Shelf (30 CFR 250). The collection ensures that lessees and operators comply with personnel safety training requirements, the crown block safety device is operating and functioning to avoid accidents, operation of the annular preventer is technically correct and provides adequate protection, the well-completion operations are conducted on well casings that are structurally competent, and the sustained casing pressures are within acceptable limits. Comments are due Nov. 28, 2016. Contact: Kelly Odom; BSEE, Regulation and Standards Branch; 703-787-1775

## Department of Veterans Affairs

### ENVIRONMENTAL IMPACT ASSESSMENT

#### Kentucky/Robley Rex Veterans Affairs Medical Center

Notice of the Department of Veterans Affairs announces the availability of a draft environmental impact statement regarding construction of a new campus to replace the Robley Rex Veterans Affairs Medical Center in Louisville, Ky. The project involves siting, construction and operation of a new campus to replace the existing medical center, benefits administration regional office and three community-based outpatient clinics. Comments are due Dec. 12, 2016. Contact: Department of Veterans Affairs, Replacement VAMC Activation Team Office; 502-287-4000; [LouisvilleReplacementHospitalComments@va.gov](mailto:LouisvilleReplacementHospitalComments@va.gov)

### OCTOBER 26 FEDERAL REGISTER

## Environmental Protection Agency

### AIR QUALITY (81 Fed. Reg. 74,504)

#### Cross-State Air Pollution Rule Update for the 2008 Ozone NAAQS

Final rule of the EPA amends regulations under 40 CFR 52, 78 and 97 to update the Cross-State Air Pollution Rule (CSAPR) to address interstate transport of ozone pollution with respect to the 2008 NAAQS. The rule establishes federal implementation plans that include updated nitrogen oxide ozone season emission budgets for electric generating units in 22 eastern states that affect the ability of downwind states to attain and maintain compliance with the 2008 ozone NAAQS, beginning with the 2017 ozone season. The rule also requires power plants in affected states to participate in the CSAPR NOx ozone-season allowance trading program. In addition, the rule addresses the status of outstanding



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interstate ozone transport obligations with respect to the 1997 ozone NAAQS to replace the CSAPR phase 2 NO<sub>x</sub> ozone-season emissions budgets invalidated by a D.C. Circuit Court ruling for eight states and to remove three states from the CSAPR NO<sub>x</sub> ozone-season trading program. The rule is effective Dec. 27, 2016. Contact: David Risley; EPA, Office of Atmospheric Programs; 202-343-9177; Risley.David@epa.gov

**ENVIRONMENTAL IMPACT ASSESSMENT** (81 Fed. Reg. 74,428)

Procedures for Implementing the National Environmental Policy Act

Notice of the EPA announces the submission of a continuing information collection request to the OMB regarding procedures for implementing the National Environmental Policy Act (NEPA) and addressing the environmental effects abroad of EPA actions (40 CFR 6). The collection addresses NEPA requirements applicable to actions of the EPA to ensure that environmental information is available to the agency's decision-makers and the public before decisions are made and before actions are taken. The actions subject to NEPA requirements include wastewater construction grants and issuance of new source NPDES permits under the Clean Water Act, certain research and development projects, renovations or construction of new facilities, and certain grants awarded by Congress under the annual Appropriations Act. Comments are due Nov. 25, 2016. Contact: Jessica Trice; EPA, Office of Federal Activities; 202-564-6646; trice.jessica@epa.gov

**Department of Energy****RADIOACTIVE WASTE** (81 Fed. Reg. 74,414)

Environmental Management Advisory Board/Northern New Mexico

Notice of the Department of Energy announces a meeting of the Environmental Management Site-Specific Advisory Board, Northern New Mexico. The board makes recommendations to DOE-EM and site management in the areas of environmental restoration, waste management and related activities. The agenda includes a review of the 2017 meeting schedule, a presentation on the annual surveillance report, updates on chromium interim measures, and updates from the Los Alamos field office and the New Mexico Environment Department. The meeting is scheduled for Nov. 15, 2016, in Taos, N.M. Comments are requested, but a due date is not specified. Contact: Menice Santistevan; DOE, Northern New Mexico Citizens' Advisory Board; 505-995-0393; Menice.Santistevan@em.doe.gov

**Office of Energy Efficiency and Renewable Energy****RENEWABLE ENERGY** (81 Fed. Reg. 74,414)

Biomass Research and Development Technical Advisory Committee

Notice of the Department of Energy, Office of Energy Efficiency and Renewable Energy, announces a meeting of the Biomass Research and Development Technical Advisory Committee. The agenda includes updates on the biomass R&D activities of the Department of Agriculture and the DOE, an update on the Biomass R&D Initiative and discussions on annual committee recommendations. The meeting is scheduled for Nov. 17-18, 2016, in Washington, D.C. Comments may be submitted at any time. Contact: Elliott Levine; DOE, Office of Energy Efficiency and Renewable Energy; 202-586-1476; Elliott.Levine@ee.doe.gov

**Federal Energy Regulatory Commission****ENVIRONMENTAL IMPACT ASSESSMENT** (81 Fed. Reg. 74,420)

Atlantic Sunrise Expansion Project

Notice of the Federal Energy Regulatory Commission announces the availability of a revised environmental review schedule for the Atlantic Sunrise Expansion Project proposed by Transcontinental Gas Pipeline Co. (Transco), of Houston. The project involves construction and operation of facilities in Maryland, North Carolina, Pennsylvania, South Carolina and Virginia, including 198 miles of pipeline. The notice specifies that the project would provide 1.7 million dekatherms per day of natural gas transportation service from various receipt points in Pennsylvania to various delivery points along Transco's existing interstate pipeline system. The issuance of an environmental assessment now is scheduled for Dec. 30, 2016, and the 90-day federal authorization decision now is due March 30, 2017. Contact: FERC, Office of External Affairs; 866-208-3372

**ENVIRONMENTAL IMPACT ASSESSMENT** (81 Fed. Reg. 74,415)

California/Prosser Creek Hydroelectric Project

Notice of the Federal Energy Regulatory Commission announces the filing of a notice of intent to file a license application by the Pyramid Lake Paiute Tribe for the Prosser Creek Hydroelectric Project at the Prosser Creek Dam, in Nevada County, Calif. The project involves the utilization of the existing intake structure in Prosser Creek Reservoir, two arched concrete conduits and the discharge channel on the downstream side of the Bureau of Reclamation Prosser Creek Dam. The project also includes the construction of a powerhouse containing two Francis generating units, a pressure-rated concrete flow-control structure, a penstock and a tailrace extending from the proposed powerhouse to meet the existing outlet channel. In addition, the project involves the construction of a channel training wall, a transmission line and electrical substation to interconnect the proposed project to an existing 69 kilovolt transmission line and a small parking area at the powerhouse with an estimated annual generation of 7.4

gigawatt-hours. The notice also specifies that the agency is initiating consultation with the U.S. Fish and Wildlife Service and the National Oceanic and Atmospheric Administration regarding joint agency requirements under the Endangered Species Act. Contact: Quinn Emmering; FERC; 202-502-6382; quinn.emmering@ferc.gov

#### **ENVIRONMENTAL IMPACT ASSESSMENT (81 Fed. Reg. 74,425)**

##### **California/Boca Hydroelectric Project**

Notice of the Federal Energy Regulatory Commission announces the filing of a notice of intent to file a license application and the approval of a request to use the traditional licensing process for the Pyramid Lake Paiute Tribe for the proposed Boca Hydroelectric Project on the Bureau of Reclamation's Boca Dam on the Little Truckee River in Nevada County, Calif. The project involves the modification of existing outlet primary outlet pipes to remove existing hollow jet valves and to add bifurcations to connect to two new penstocks. The project also involves the construction of a powerhouse containing a single Kaplan generating unit, a tailrace that discharges water downstream of the existing outlet channel walls, a channel training wall, a step-up transformer installed at the powerhouse generator, a new transmission line and appurtenant facilities with an estimated annual generation of 3.5 gigawatt-hours. The notice also specifies that the agency is initiating consultation with the U.S. Fish and Wildlife Service and the National Oceanic and Atmospheric Administration regarding joint agency requirements under the Endangered Species Act. Contact: Kyle Olcott; FERC; 202-502-8963; kyle.olcott@ferc.gov

#### **ENVIRONMENTAL IMPACT ASSESSMENT (81 Fed. Reg. 74,417)**

##### **South Carolina/Transco to Charleston Project**

Notice of the Federal Energy Regulatory Commission announces the availability of an environmental assessment for the Transco to Charleston Project proposed by Dominion Carolina Gas Project LLC, of Cayce, S.C. The project involves the construction and operation of facilities in Aiken, Charleston, Dillon, Dorchester, Greenwood, Laurens, Newberry and Spartanburg counties in South Carolina to provide firm transportation service of 80,000 dekatherms of natural gas per day to local commercial, industrial and power generation customers. The project also involves the construction of 60 miles of natural gas pipeline, the installation of five compressor units, and the conversion of one existing compressor unit from standby to use status. The notice specifies the agency's conclusion that with appropriate mitigating measures the project would not constitute a major federal action significantly affecting the quality of the human environment. Comments are due Nov. 18, 2016. Contact: FERC, Office of External Affairs; 866-208-3372

#### **ENVIRONMENTAL IMPACT ASSESSMENT (81 Fed. Reg. 74,418)**

##### **Pennsylvania/H-125 Uprate Project**

Notice of the Federal Energy Regulatory Commission announces the filing of a prior notice request by Equitrans LP, of Pittsburgh, under the Natural Gas Act and its blanket certificate for authorization to construct and

operate the H-125 Uprate Project in Pennsylvania. The applicant requests authorization to retest certain portions and to increase the maximum allowable operating pressure (MOAP) of its existing H-125 pipeline in Washington County and to replace, remove or modify appurtenant facilities located in Allegheny and Washington counties for an increase in MAOP of the pipeline to 546 pounds per square inch gauge. The notice specifies that the agency will complete an environmental assessment or issue a notice of schedule of environmental review by Jan. 18, 2017. Protests and motions to intervene are due Dec. 19, 2016. Contact: Kimberly Bose; FERC; 866-208-3676

#### **ENVIRONMENTAL IMPACT ASSESSMENT (81 Fed. Reg. 74,420)**

##### **Massachusetts/Northfield Mountain Pumped Storage Project**

Notice of the Federal Energy Regulatory Commission announces the filing of an application by FirstLight Hydro Generating Co., of Hartford, Conn., to amend its license for the Northfield Mountain Pumped Storage Project on the Connecticut River in Erving and Northfield, Mass. The applicant requests authorization to temporarily increase the upper reservoir's surface elevation limits in order to use additional storage capacity between Dec. 1, 2016, and March 31, 2017, to address winter reliability needs. Comments, motions to intervene and protests are due Nov. 21, 2016. Contact: Christopher Chaney; FERC; 202-502-6778; christopher.chaney@ferc.gov

#### **ENVIRONMENTAL IMPACT ASSESSMENT (81 Fed. Reg. 74,421)**

##### **Maine/West Buxton Hydroelectric Project**

Notice of the Federal Energy Regulatory Commission announces the filing of a new major license application by Brookfield White Pine Hydro LLC, of Lewiston, Maine, regarding the West Buxton Hydroelectric Project on the Saco River in Cumberland and York counties in Maine. The project consists of an existing concrete dam, an impoundment, a dam-integral powerhouse with five generating units that total 3,812 kilowatts, a second powerhouse with a 4,000-kW generating unit, a conduit, a surge chamber, transmission lines, a switching station, and appurtenant facilities with an average annual generating capacity of 34,007 megawatt hours. The notice also includes the environmental review schedule for the project. Comments, motions to intervene and protests are due Dec. 27, 2016. Contact: Allan Creamer; FERC; 202-502-8365; allan.creamer@ferc.gov

#### **ENVIRONMENTAL IMPACT ASSESSMENT (81 Fed. Reg. 74,425)**

##### **New York/Eagleville Hydroelectric Project**

Notice of the Federal Energy Regulatory Commission announces the filing of a preliminary permit application by Skandana LLC, of Syracuse, N.Y., for the proposed Eagleville Hydroelectric Project to be located on the Chenango River near Morrisville, N.Y. The project involves construction of a concrete dam, a water impoundment, a concrete spillway, a steel penstock, a powerhouse, two 1,000-kilowatt turbine-generating units, a tailrace, a transmission line, and additional facilities with annual generation of 8.5 kilowatt-hours.

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Comments, motions to intervene and competing applications are due Dec. 19, 2016. Contact: Tim Looney; FERC; 202-502-6096

**OIL AND GAS (81 Fed. Reg. 74,424)**

Natural Gas Facilities/Environmental Review and Compliance

Notice of the Federal Energy Regulatory Commission announces the submission of a continuing information collection request to the OMB regarding natural gas facilities environmental review and compliance (FERC-577). The collection addresses pipeline certificates, environmental impact statements and other related environmental compliance requirements (18 CFR 2, 157, 284 and 380). The collection also addresses reporting requirements for landowner notifications. Comments are due Nov. 25, 2016. Contact: Ellen Brown; FERC; 202-502-8663; DataClearance@FERC.gov

**PUBLIC UTILITIES (81 Fed. Reg. 74,419)**

Northeast Power Coordinating Council/Mandatory Reliability Standards

Notice of the Federal Energy Regulatory Commission announces the submission of a revised information collection request to the OMB concerning mandatory reliability standards for the Northeast Power Coordinating Council (FERC-7251). The revisions retire the regional reliability standard for disturbance monitoring and two related regional definitions, "current zero time" and "generating plant." Comments are due Nov. 25, 2016. Contact: Ellen Brown; FERC; 202-502-8663; DataClearance@FERC.gov

**Nuclear Regulatory Commission****RADIATION (81 Fed. Reg. 74,484)**

Nuclear Power Plants/Nuclear Material Control and Accounting Systems

Notice of the Nuclear Regulatory Commission announces the issuance of Revision 1 to Regulatory Guide 5.51 regarding independent assessment of nuclear material control and accounting systems. The revised guidance expands prior guidance to include process monitoring and item monitoring for Category I fuel cycle facilities and to address uranium enrichment facilities. The document also includes changes in terminology. The revisions are effective Oct. 26, 2016. Contact: Glenn Tuttle; NRC, Office of Nuclear Material Safety and Safeguards; 301-415-7230; Glenn.Tuttle@nrc.gov

**Department of State****LEGISLATIVE AND ADMINISTRATIVE ACTIVITY (81 Fed. Reg. 74,486)**

U.S.-Peru Trade Agreement/Environmental Issues Meetings

Notice of the Department of State and the Office of the U.S. Trade Representative announces the sixth meeting of the U.S.-Peru Environmental Affairs Council, the eighth meeting of the subcommittee on Forest Sector Governance and the fourth meeting of the Environmental Cooperation Commission. The agenda includes review of implementation of Chapter 18 (Environment) and the annex on forest sector governance of the U.S.-Peru Trade Promotion Agreement and the U.S.-Peru Environmental Cooperation Agreement. The meetings are scheduled for Nov. 4, 2016, in Lima. Comments are due Nov. 1, 2016. Contact: Rachel Kastenbergh, Department of State, Office of Environmental Quality and Transboundary Issues; 202-736-7111; KastenberghRL@state.gov

**Fish and Wildlife Service****ENVIRONMENTAL IMPACT ASSESSMENT (81 Fed. Reg. 74,476)**

Washington State/Grays Harbor, Billy Frank Jr. Nisqually National Wildlife Refuges

Notice of the U.S. Fish and Wildlife Service announces the availability of a draft comprehensive conservation plan and environmental assessment (CPP/EA) for the Grays Harbor and the Black River Unit of the Billy Frank Jr. Nisqually National Wildlife Refuges in Grays Harbor and Thurston counties in the state of Washington. The draft CPP/EA describes the proposal for management of the refuge for the next 15 years, including information on issues and resources and the service's proposed management alternatives. Comments are due Nov. 25, 2016. Contact: Glynnis Nakai; USFWS; 360-753-9467

**Food and Drug Administration****AIR QUALITY (81 Fed. Reg. 74,364)**

Ozone-Depleting Substances

Proposed rule of the Food and Drug Administration amends regulations under 21 CFR 2.125 regarding use of ozone-depleting substances. The rule removes Clean Air Act essential-use exemptions for sterile aerosol talc administered intrapleurally by thoracoscopy for human use and metered-dose atropine sulfate aerosol human drugs administered by oral inhalation. A concurrent direct final rule adopts the amendments, effective Feb. 23, 2017. Comments are due Dec. 27, 2016. Contact: Daniel Orr; FDA, Center for Drug Evaluation and Research; 240-402-0979; daniel.orr@fda.hhs.gov

**AIR QUALITY (81 Fed. Reg. 74,368)**

Ozone-Depleting Substances/Anesthetic Drugs

Proposed rule of the Food and Drug Administration amends regulations under 21 CFR 2.125 regarding use of ozone-depleting substances. The rule removes the Clean Air Act essential-use exemption for anesthetic drugs for topical use on accessible mucous membranes of humans where a cannula is used for application. Comments are due Dec. 27, 2016. Contact: Daniel Orr; FDA, Center for Drug Evaluation and Research; 240-402-0979; daniel.orr@fda.hhs.gov

**PHARMACEUTICALS** (81 Fed. Reg. 74,298)**Ozone-Depleting Substances**

Direct final rule of the Food and Drug Administration amends regulations under 21 CFR 2.125 regarding use of ozone-depleting substances. The rule removes Clean Air Act essential-use exemptions for sterile aerosol talc administered intrapleurally by thoracoscopy for human use and metered-dose atropine sulfate aerosol human drugs administered by oral inhalation. The rule is effective Feb. 23, 2017. Comments are due Dec. 27, 2016. Contact: Daniel Orr; FDA, Center for Drug Evaluation and Research; 240-402-0979; daniel.orr@fda.hhs.gov

**National Institutes of Health****CHEMICAL REGULATION** (81 Fed. Reg. 74,458)**Identifying Substances with Potential to Cause Excessive Inflammation, Exaggerated Immune Responses**

Notice of the National Institutes of Health, National Toxicology Program, announces a request for information regarding available data and information on approaches and technologies currently used to identify substances with the potential to cause excessive inflammation or exaggerated immune responses leading to tissue injury when swallowed, inhaled or absorbed through the skin. The notice specifies that the information will be used to assist in identifying in vitro or alternative animal model screens to assess the potential for chemicals to cause outcomes related to Type 1 diabetes and in vitro platforms to identify environmental triggers of excessive inflammation and exaggerated immune responses that could lead to tissue injury. Comments are due Dec. 12, 2016. Contact: Dori Germolec; NIH, National Toxicology Program; 919-541-3230; germolec@niehs.nih.gov

**Office of Surface Mining, Reclamation, and Enforcement****MINING** (81 Fed. Reg. 74,302)**Alabama Surface Mining Regulatory Program**

Final rule of the Office of Surface Mining Reclamation and Enforcement amends regulations under 30 CFR 901.15 to approve revisions to the Alabama surface coal mining regulatory program. The revisions align the state program with federal standards regarding awarding of appropriate costs and expenses to a party only if a person initiated or participated in a proceeding in bad faith for the purpose of harassing or embarrassing the permittee or state regulatory authority. The revisions also allow any party the opportunity to be awarded costs and expenses by a final appellate body. The rule is effective Oct. 26, 2016. Contact: Sherry Wilson; OS-MRE, Birmingham Field Office; 205-290-7282; swilson@osmre.gov

**Federal Emergency Management Agency****ENVIRONMENTAL IMPACT ASSESSMENT** (81 Fed. Reg. 74,462)**FEMA Grants/Environmental and Historic Preservation Screening Form**

Notice announces the intention of the Federal Emergency Management Agency to seek OMB approval for a revised information collection request regarding the Environmental and Historic Preservation (EHP) Screening Form (024-0-1) for recipients of Grant Programs Directorate funding for homeland security and emergency preparedness projects. The collection addresses requirements for grant recipients to submit project information to facilitate FEMA review of potential environmental impacts and alternatives. The revisions remove the requirement for submission of floodplain and wetlands maps or information concerning a proposed project's relationship to an existing master plan and add guidance on providing photographs with the EHP submission. Comments are due Dec. 27, 2016. Contact: Beth McWaters-Bjorkman; FEMA; 202-786-9854; elizabeth.mcwaters-bjorkman@fema.dhs.gov

**Comment Deadlines on Major Regulations & Other Actions**

Chemicals	EPA notice on a draft Integrated Risk Information System (IRIS) assessment of ethyl tertiary butyl ether (81 Fed. Reg. 60,351; Docket No. EPA-HQ-ORD-2009-0229; Sept. 1, 2016)	Oct. 31, 2016	Contact Keith Salazar in EPA's National Center for Environmental Assessment at (703) 347-0278
Air Pollution	EPA notice on the development of standards to reduce methane emissions from existing oil and gas facilities (81 Fed. Reg. 66,962); Docket No. EPA-HQ-OAR-2016-0204; Sept. 29, 2016	Oct. 31, 2016	Contact Brenda Shine in EPA's Office of Air Quality Planning and Standards at (919) 541-3608
Energy Efficiency	Department of Energy proposed rule to revise the definition of "general service lamp" (GSL) in connection with a March 17, 2016, proposed rule to establish new and revised energy conservation standards for GSLs (10 CFR 429.56, 430.2 and 430.3)(81 Fed. Reg. 14,528; Docket No. EE-2013-BT-STD-0051; Oct. 18, 2016)	Nov. 8, 2016	Contact Lucy deButts in DOE's Office of Energy Efficiency and Renewable Energy at (202) 287-1604

### Comment Deadlines on Major Regulations & Other Actions – Continued

Endangered Species	Bureau of Land Management notice on a draft Gunnison sage-grouse rangewide draft resource management plan amendment and draft environmental impact statement for Colorado and Utah (81 Fed. Reg. 53,503; Aug. 12, 2016)	Nov. 10, 2016	Contact Roger Sayre in BLM's Colorado Southwest District Office at (303) 239-3709
Air Pollution	EPA proposed rule to revise greenhouse gas provisions of the Prevention of Significant Deterioration (PSD) and Title V Permitting Programs (40 CFR 51.166, 52.21, 60.5360a, 60.5515, 60.5705, 70.2 and 71.2; 40 CFR 52.1233, 52.2305 and 52.2590)(81 Fed. Reg. 68,110; Docket No. EPA-HQ-OAR-2015-0355; Oct. 3, 2016)	Dec. 2, 2016	Contact Carrie Wheeler in EPA's Air Quality Policy Division at (919) 541-9771
Air Pollution	EPA proposed rule to revise the petroleum refinery NESHAP maximum achievable control technology (MACT) 1 and 2 standards in response to petitions for reconsideration of a Dec. 1, 2015, final rule (40 CFR 63.640, 63.648 and 63.670)(81 Fed. Reg. 75,178; 81 Fed. Reg. 71,661; Docket No. EPA-HQ-OAR-2010-0682; Oct. 18, 2016)	Dec. 2, 2016	Contact Brenda Shine in EPA's Sector Policies and Programs Division at (919) 541-3608
Water Pollution	EPA advance notice of proposed rulemaking to establish federal baseline water quality standards (WQS) for certain Indian reservation waters (40 CFR 131)(81 Fed. Reg. 66,900; Docket No. EPA-HQ-OW-2016-0405; Sept. 29, 2016).	Dec. 28, 2016	Contact Mary Lou Soscia at Environmental Protection Agency Region 10 at (503) 326-5873